

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: James Thompson et al.
Serial No.: 09/767,374
Filing Date: January 22, 2001
Group Art Unit: 2452
Confirm: 2543
Examiner: Dohm Chankong
Title: *DISTRIBUTED NETWORK COMMUNICATION
SYSTEM WHICH ALLOWS MULTIPLE WIRELESS
SERVICE PROVIDERS TO SHARE A COMMON
NETWORK INFRASTRUCTURE*

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The following Pre-Appeal Brief Request for Review (“Request”) is being filed in accordance with the provisions set forth in the Official Gazette Notice of July 12, 2005 (“OG Notice”). Pursuant to the OG Notice, this Request is being filed concurrently with a Notice of Appeal. Applicants respectfully request reconsideration of the Application in light of the remarks set forth below.

REMARKS

This Application has been carefully reviewed in light of the Final Office Action. (“*Office Action*”) mailed October 24, 2011. At the time of the *Office Action*, Claims 146-166, 168-172, 174-177, 179-221, 256-274, 276-279, 286-301 and 303-311 were pending in the Application and stand rejected. Applicants respectfully traverse the rejections and request reconsideration and favorable action in this case.

I. The Pending Claims are Allowable over the Cited References.

The Examiner rejects Claims 146-177, 179-190, 192-210, 212-221, 256-279, 285, and 287-301 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent 6,847,620 to Meier, et al. (“*Meier*”), U.S. Patent Application Publication No. 2002/0019875 to Garrett (“*Garrett*”), and U.S. Patent 7,197,556 to Short (“*Short*”). The Examiner also rejects Claim 191 under 35 U.S.C. 103(a) as allegedly unpatentable over *Meier*, *Garrett*, and *Short*, as applied above, and further in view of IEEE Std 802.11-1997, (“*IEEE*”). The Examiner rejects Claim 211 under 35 U.S.C. 103(a) as allegedly unpatentable over *Meier*, *Garrett*, and *Short*, as applied above, and further in view of admitted prior art (“*APA*”). The Examiner rejects Claims 302-311 under 35 U.S.C. 103(a) as allegedly unpatentable over *Meier*, *Garrett*, *Short*, and in further view of U.S. Patent 6,677,894 to Sheynblat (“*Sheynblat*”).

Because the rejections of the claims are improper on clear legal and factual grounds, Applicants request that the Pre-Appeal Board instruct the Examiner to issue a Notice of Allowance for these claims.

A. The cited references do not teach or suggest “selectively providing network access . . . based on the received system identification information and the determined geographic location of the portable wireless computing device”

Among other aspects, the cited references do not teach or suggest, “the first access point selectively providing network access to the portable wireless computing device based on the received system identification information and the determined geographic location of the portable wireless computing device, the network access provided using the determined first VLAN,” as Claim 146 recites. As teaching these claimed concepts, the *Office Action* points to column 6, lines 58-61 and column 7, lines 31-35 of *Short*. The cited portion, among

other things, describes a “network system . . . grant[ing] network access to a specific location (e.g. a hotel room, a specific apartment address, etc) **rather than a specific user or host residing at the location.**” *Short*, col. 6, ll. 58-61 (emphasis added). *Short* further discloses “configuration upon **initial installation** to accommodate location-based identification” by “configuring the gateway so that VLAN ID’s are assigned to individual entities or ports (i.e. room numbers, apartment, units, etc.)” *Id.* at col. 9, ll. 38-45 (emphasis added). For example, “[a]dding a port-assignment to the gateway device database may involve assigning a port number, assigning a location to the port number and a conditional state for this port-location.” *Id.* at col. 9, ll. 47-50.

Thus while *Short* appears discloses port-location mappings and granting access to specific ports that are tied to particular locations, *Short* does not teach or suggest, “the first access point selectively providing network access to the portable wireless computing device **based on the received system identification information and the determined geographic location of the portable wireless computing device,**” as required by the claim. In fact, *Short* teaches away from selectively providing network access based on either or both (1) “the received system identification information” and (2) “the determined geographic location of the portable wireless computing device.” Instead, *Short* teaches granting network access based on the **location of the port**, regardless of any system identification information or the location of a computing device. Indeed, network access may be granted during “initial installation” before any device is ever connected to the port. *See id.* at col. 9, ll. 38-45. Therefore, *Short* fails to teach or suggest, “the first access point determining a geographic location of the portable wireless computing device,” let alone “the first access point selectively providing network access to the portable wireless computing device based on the received system identification information and the determined geographic location of the portable wireless computing device.” Accordingly, Claim 146 is allowable.

In addition, the Examiner points to certain portions of Applicants specification to somehow argue that “*Short*’s teaching is similar in scope to what is described in Applicant’s specification.” *Office Action*, p. 4 (emphasis in original). The Examiner’s reasoning is legally flawed, because it fails to focus on Applicants’ claim language. The MPEP states that “[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the **claimed** invention would have been obvious.” MPEP § 2142 (emphasis added). Accordingly, the Examiner’s focus on certain aspects of the specification that may

(or may not) disclose related embodiments is misplaced. Accordingly, because the Examiner has failed to demonstrate that cited references teach or suggest all claimed concepts, Claim 146 is allowable.

Independent Claims 174, 177, 202, 256 and 286-289 include limitations that, for substantially similar reasons are not taught or suggested by the various proposed combinations of the cited references. Accordingly, because the rejections contain clear legal and factual deficiencies, Applicants respectfully request the Pre-Appeal Board to direct the Examiner to issue a Notice of Allowance for Claims 146, 174, 177, 202, 256 and 286-289 and their respective dependent claims.

B. The cited references do not teach or suggest “receiving GPS data from the portable wireless computing device in order to determine the geographic location of the portable wireless computing device”

In addition to the reasons above for allowing Claims 303-311, the cited references do not teach or suggest “receiving Global Positioning System (GPS) data from the portable wireless computing device in order to determine the geographic location of the portable wireless computing device,” as these dependent claims require. *See, e.g.*, Claim 303. As teaching these claimed aspects, the *Office Action* points to Figure 1, items 9, 12a-12d, column 4, lines 33-61, column 18, line 55 and column 20, lines 23-28 of *Sheynblat*. *Office Action*, p. 37-38. Applicants respectfully submit that it is improper to combine *Sheynblat* with *Meier*, *Garret*, and *Short*. While *Sheynblat* appears to teach the use of “mobile GPS receivers,” *Short* teaches away from location based identification tied to a specific user or host residing at a location. Instead, as discussed above, *Short* teaches “grant[ing] network access to specific location [using a port-location mapping] . . . rather than [using] a specific user or host residing at the location.” *Short*, col. 6, ll. 58-61.

Moreover, modifying *Short* to use GPS data from the portable device changes the principle of operation of *Short*’s disclosure, which is directed to facilitating location-based network management using port-location mappings. For example, as discussed above, *Short* discloses “configuration upon **initial installation** to accommodate location-based identification” by “configuring the gateway so that VLAN ID’s are assigned to individual entities or ports (i.e. room numbers, apartment, units, etc.)” *Id.* at col. 9, ll. 38-45 (emphasis added). Since the proposed modification to *Short* would change its principle of operation,

Sheynblat's disclosure is insufficient to render the claims *prima facie* obvious. *See* MPEP 2143.01. VI (citing *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)). For these additional reasons, Applicants respectfully request reconsideration and allowance of Claims 303-311.

Independent Claims 146, 174, 177, 202, 256, 286, 287, 288, and 289 include limitations that, for substantially similar reasons, do not teach or suggest all elements of the claims. Accordingly, because the rejections contain clear legal and factual deficiencies, Applicants respectfully request the Pre-Appeal Board to direct the Examiner to issue a Notice of Allowance for Claims 146, 174, 177, 202, 256, 286, 287, 288, and 289, and their respective dependent claims.

CONCLUSION

As the rejections of Claims 146-166, 168-172, 174-177, 179-221, 256-274, 276-279, 286-301 and 303-311 contain clear legal and factual deficiencies, Applicants respectfully request the Pre-Appeal Board to direct the Examiner to issue a Notice of Allowance for these claims. To the extent necessary, the Commissioner is hereby authorized to charge any fee and credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicants



Kurt M. Pankratz
Reg. No. 46,977

Date: 1/24/2012

Customer Number: 05073